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September 30, 2015

VIA ECF AND HAND DELIVERY

Judge Stuart M. Bernstein
United States Bankruptcy Court
Southern District of New York
One Bowling Green
New York, NY 10004-1408

Re: Picard v. Cohmad Sec. Corp., et al., Adv. Pro. No. 09-01305 (SMB)

Dear Judge Bernstein:

We are counsel to Irving H. Picard, Esq., the Trustee for the substantively consolidated SIPA liquidation proceedings of Bernard L. Madoff Investment Securities LLC and the estate of Bernard L. Madoff. We write in connection with Defendant Jonathan Greenberg's ("Greenberg") Motion for a Protective Order and to Quash Two Subpoenas under Fed. R. Civ. P. 45 (the "Motion to Quash") (ECF No. 323).

This Court entered an order denying the Motion to Quash on September 2, 2015 (the "Order") (ECF No. 347) and stayed the effective date of the Order for fourteen (14) days. On September 16, 2015, Greenberg filed a Motion for Leave to Appeal the Order and a Notice of Appeal (the "Motion for Leave") (ECF Nos. 350, 351).

Although the Motion for Leave was filed with the Bankruptcy Court, it has not been transmitted to the District Court. It appears that Greenberg failed to file the requisite civil cover sheet, as required by the Bankruptcy Court's Procedural Guidelines and Policies on Appeals. Because the Motion for Leave has not yet been transmitted to the District Court, the Trustee filed his opposition to the Motion for Leave in the Bankruptcy Court today (ECF No. 354). The Trustee will take appropriate steps to refile the opposition with the District Court after the Motion for Leave is transmitted there.

Further, in the Motion for Leave, Greenberg noticed a hearing for 10:00 a.m. on October 14, 2015 before this Court (the "Hearing"). Pursuant to 28 U.S.C. § 158(a)(3), it is the District Court, not the Bankruptcy Court, which may grant leave to appeal an interlocutory order. In fact, Greenberg is not even entitled to oral argument on his Motion for Leave absent an order from the District Court. See Fed. R. Bankr. P. 8004(c)(3) ("The motion and any response . . . are submitted without oral argument unless the district court or BAP orders otherwise.").

Judge Stuart M. Bernstein
September 30, 2015
Page 2

Accordingly, Greenberg's Hearing notice in the Motion was improper, and the Trustee respectfully requests that this Court remove the Hearing from its calendar.

Respectfully,

/s/ Esterina Giuliani

Esterina Giuliani

cc: Kathryn M. Zunno (via ECF and email)
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